

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAVVIER, LP, a California Limited Partnership,

Plaintiff,

v.

Civil No.:

WONDERFULBUYS.COM, an entity unknown,
conducting business in Batavia, New York;
YOUCANSAVE.COM, INC.,
a Corporation dba YOUCANSAVE.COM,
conducting business in Batavia, New York;
LEENA, INC., a Corporation; GOOD WORLD
CORPORATION, a Virginia Corporation; and
VEDANT RAJPUT, an individual,

Defendants.

**COMPLAINT FOR COPYRIGHT INFRINGEMENT, FALSE DESIGNATION OF
ORIGIN, TRADE DRESS INFRINGEMENT, NEW YORK COMMON LAW UNFAIR
COMPETITION, CONSTRUCTIVE TRUST AND ACCOUNTING; INJUNCTIVE
RELIEF REQUESTED; DEMAND FOR JURY TRIAL**

This is an action commenced by Plaintiff Savvier, LP (“Savvier”) for copyright infringement under 17 U.S.C. §501 *et seq.* and trademark infringement under §43(a) of the Lanham Act, 15 U.S.C. §1125(a).

PARTIES

1. Plaintiff Savvier, LP is, and during all relevant times herein, has been a California limited partnership, maintaining its principal place of business at 5790 Fleet Street, Suite 130, Carlsbad, California 92008.

2. Defendant Wonderfulbuys.com is on information and belief, a Canadian business entity, form unknown, doing business within the State of New York and having a principal office at 4330 Commerce Drive, Batavia, New York 14020.

3. Defendant YouCanSave.com, Inc., is on information and belief, a corporation dba YouCanSave.com, doing business within the State of New York and having a principal office at 4330 Commerce Drive, Batavia, New York 14020.

4. Defendant Good World Corporation, is on information and belief, a Virginia Corporation, conducting business within the State of New York.

5. Defendant Leena Inc., is on information and belief, a business entity, form unknown, conducting business with the State of New York. Wonderfulbuys.com is, on information and belief, a division of Leena, Inc.

6. Defendant Vedant Rajput, is on information and belief, an individual and chief operating officer of Wonderfulbuys.com, conducting business within the State of New York and a resident of Ontario, Canada. Vedant Rajput, on information and belief, is also the Administrative and Technical Contact for the website YouCanSave.com.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. §1338, 28 U.S.C. §1331 and 28 U.S.C. §1332. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.*, and is also an action for violations of §43(a) of the Lanham Act, 15 U.S.C. §1125.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391 (b)(2).

COUNT I

(Infringement Of Copyright Against All Defendants)

9. Savvier repeats and re-alleges each and every allegation contained in paragraphs 1-8 and incorporates each herein by reference.

10. Savvier is the owner of 6 *Second Abs*, an exercise program that includes a manually operated exercise device for exercising the abdominal muscles.

11. Savvier owns all federal copyrights of the *6 Second Abs* product line, including the copyrights in and to the product videos/DVDs (“*6 Second Abs* Rock Hard Abs,” “*6 Second Abs* Total Body,” and “*6 Second Abs* Fat Burning Cardio”), product literature (“*6 Second Abs* Program Product Literature”) and website (“6secondabs.com”). True and correct copies of Savvier’s United States Copyright Office Certificates of Registration are attached hereto and incorporated herein as **Exhibit “A.”**

12. Savvier also claims ownership in the mark *6 Second Abs*, which is pending registration on the Principal Register of the United States Patent and Trademark Office. By virtue of sales of over \$55 million dollars of product containing this trademark, *6 Second Abs* has acquired secondary meaning and functions as an indicator of source.

13. Savvier has been actively and successfully marketing and selling the *6 Second Abs* product line within numerous geographical territories throughout the United States, including the State of New York. As of the date of this filing, *6 Second Abs* has generated approximately \$55 million in revenues, and just within the United States, has sold approximately \$50 million in product. In or about February/March 2004, *6 Second Abs* was ranked as the #1 Infomercial in the country by both Infomercial Monitoring Services (“IMS”) and the Jordan Whitney Ranking Services, and continues to remain in IMS and Jordan Whitney’s top twenty rankings.

14. Defendants are infringing Savvier’s exclusive rights to distribute *6 Second Abs* products by distributing and selling counterfeit *6 Second Abs* products without authorization. Neither of Defendants have ever received authorization from Savvier to distribute and/or sell *6 Second Abs* products.

15. During the past six months, Savvier has encountered continuing problems with the unauthorized sales and distribution of counterfeit *6 Second Abs* products in the United States. Savvier has prosecuted actions in both the United States District Court Eastern District of New York and Middle District of Florida for copyright and trademark infringement in connection with counterfeit *6 Second Abs* products, and has obtained a Permanent Injunction and/or Preliminary Injunction from each Court enjoining the defendant in those actions from selling and distributing counterfeit *6 Second Abs* products.

16. As a result of Savvier's counterfeit actions, Savvier registered all of its intellectual property in connection with the *6 Seconds Abs* product line with U.S. Customs in order to prevent any importation into the United States of counterfeit *6 Second Abs* products.

17. On or about November 2004, Savvier's counsel was notified by U.S. Customs that an unauthorized importation of counterfeit *6 Second Abs* products had entered the Port of Baltimore, Maryland and was being detained by U.S. Customs for a potential seizure.

18. Subsequently, an individual by the name of "Jack Michelle" sent Savvier's sole authorized Taiwanese manufacturer and distributor an e-mail correspondence requesting an authorization letter for U.S. Customs' officers (explaining that his goods were authentic) under false pretenses that Savvier approved of his request. Upon clicking on Jack Michelle's company tag line appearing at the bottom of his e-mail, the user is directly linked to Defendant YouCanSave.com's website.

19. Thereafter, Savvier's counsel was informed that U.S. Customs had in fact seized the counterfeit *6 Second Abs* products that were being detained and that Good World Corporation, located in Vienna, Virginia was the ultimate destination of such goods. Savvier is informed and believes that Good World Corporation is involved in the distribution and sale of

counterfeit *6 Second Abs* products to Defendant YouCanSave.com, who has the ultimate interest in the subject goods.

20. Savvier is informed and believes and alleges thereon that a direct connection exists between Defendant YouCanSave.com, Inc. dba YouCanSave.com and Defendant Wonderfulbuys.com, who both offer *6 Seconds Abs* products on their respective websites, who both share the same address in Batavia, New York, that involve the same employees, and that interchangeably fulfill orders placed on each other's websites.

21. During the week of November 22, 2004, pursuant to Savvier's request, one of Savvier's business contacts placed an order with Defendant Wonderfulbuys.com's website (<http://www.wonderfulbuys.com>) for a *6 Second Abs* product kit, which contained a counterfeit *6 Second Abs* exercise unit, unauthorized copies of Savvier's copyrighted images on the counterfeit product box (U.S. Copyright Registration No. TX 5-905-620), a counterfeit version of Savvier's product literature/instruction manual (U.S. Copyright Registration No. TX 5-829-896) and counterfeit copies of Savvier's DVDs (U.S. Copyright Registration Nos. PA 1-99-493 and PA 1-199-485). The shipping label for this kit likewise identified Defendant Wonderfulbuys.com as the source of the goods.

22. Upon receipt of this product kit, Savvier examined the kit and found it to all contain counterfeit merchandise. The kit is a direct counterfeit of Savvier's *6 Second Abs* product kit, and falsely states that Savvier is the manufacturer of the counterfeit goods.

23. Particularly, when comparing the counterfeit *6 Second Abs* kit with the real product kit, Savvier found the following differences:

(1) the counterfeit *6 Second Abs* unit is missing the mold marking found on the inside of the unit handle compared to the genuine product that contains the letters "UY"

followed by a number on the inside of the unit handle;

(2) the counterfeit *6 Second Abs* unit crookedly displays both the *6 Second Abs* logo sticker and the back unit sticker (containing the company's name and trademark information) compared to the genuine product kit where both stickers are carefully put on straight;

(3) the counterfeit *6 Second Abs* unit is much flimsier compared to the genuine unit;

(4) the counterfeit *6 Second Abs* unit's EVA foam padding found at the base of the unit is loose fitting compared to a genuine *6 Second Abs* unit where the EVA foam padding is placed securely on the unit;

(5) the counterfeit *6 Second Abs* product box contains poorer quality images than the real product box;

(6) the caps found on the counterfeit *6 Second Abs* unit resistance bands (found within the unit) are different (i.e., a rougher finish) than those used on the genuine unit.

(7) the print quality on the counterfeit *6 Second Abs* dvds is slightly lighter and less saturated in color than the print quality on the genuine dvds. Savvier does not sell these dvds separate or apart from the *6 Second Abs* product kits thereby confirming they are counterfeit product.

24. Defendants' sale and distribution of counterfeit *6 Second Abs* products constitutes blatant infringement of Savvier's copyright interests. Savvier has no control over the quality of the counterfeit *6 Second Abs* units sold by Defendants, and is being irreparably harmed through loss of sales, damage to its reputation and good will and a serious threat of increased rate of returns. Customer Service Representatives will have no way of knowing from each call whether

or not that customer holds a counterfeit or real *6 Second Abs* unit. Not only will customer complaints and returns irreparably damage Savvier's good name and good will, but if allowed to continue and escalate, the financial damage resulting from costs of returns and an influx of service center calls can be devastating to Savvier.

25. The use by Defendants of counterfeit *6 Second Abs* product kits causes purchaser confusion, mistake and deception because Defendants' merchandise falsely suggests that the inferior and counterfeit products that they are selling are in fact sponsored, distributed and sold by Savvier.

26. As a direct and proximate result of Defendants' acts of infringement of Savvier's copyright interests, Savvier has sustained substantial damages in an amount presently unknown but which will be established at trial according to proof.

27. Defendants' acts of infringement irreparably harm Savvier's copyright interests, as well as its good name and good will. Accordingly, Savvier is entitled to an injunction barring Defendants from, among other things: (i) claiming or representing to anyone that they have any ownership interests in *6 Second Abs* products; (ii) further distributing and selling *6 Second Abs* products; and (iii) obtaining or retaining physical possession of any counterfeit *6 Second Abs* products.

28. Savvier has no adequate remedy at law to redress Defendants' continuing wrongful conduct.

29. As a direct result of Defendants' infringing conduct, Savvier is also entitled to statutory copyright damages, or if Savvier so elects, Savvier's actual damages and the Defendants' profits according to proof at trial.

COUNT II

(False Designation of Origin Under §43(a) of The Lanham Act, 15 U.S.C. §1125(a) Against All Defendants)

30. Savvier repeats and re-alleges each and every allegation contained in paragraphs 1 - 8, 10 - 29 and incorporates each herein by reference.

31. Savvier has expended considerable resources in establishing the *6 Seconds Abs* mark in the minds of customers as an effective exercise program. Savvier is well known throughout the United States and the world as the exclusive source of origin for authorized *6 Second Abs* products.

32. Defendants' use of the *6 Second Abs* mark on its counterfeit goods is likely to cause confusion or mistake or deception to the consuming public as to the source of origin of those goods.

33. Purchasers are likely to purchase Defendants' counterfeit goods bearing the *6 Second Abs* mark believing they are Savvier's authorized products.

34. Savvier has no control over the quality of the goods or services sold by Defendants, and because of the confusion as to the source engendered by Defendants, Savvier's valuable good will in respect to *6 Second Abs* will be irreparably harmed.

35. The use by Defendants of *6 Second Abs* mark has caused confusion and mistake and deception of purchasers as to the source of origin of their goods which falsely suggest that its counterfeit *6 Second Abs* products are sponsored by, licensed by or otherwise affiliated with Savvier, the exclusive manufacturer. These actions constitute trademark infringement and are in violation of, *inter alia*, 15 U.S.C. §1125(a).

36. In or about early December 2004, an investigative agent for Savvier, Abacus Security, ordered a 6 *Second Abs* product kit from Wonderfulbuys.com's website and another 6 *Second Abs* product kit from YouCanSave.com's website.

37. Despite placing an order for 6 *Second Abs* product kits, Savvier's agent received two product kits from Defendants identified as *Triple Strength Abs* in an attempt to pass off *Triple Strength Abs* as 6 *Second Abs*. Although the 6 *Second Abs* orders were placed on Defendants' separate websites, both product kits contained return address labels indicating Defendant Wonderfulbuys.com as the source of the goods. "*Triple Strength Abs*" is a knock-off of "6 *Second Abs*" product in that it shares the same trade dress, product configuration and contains a knock-off 6 *Second Abs* exercise device.

38. The passing off of Defendants' *Triple Strength Abs* as 6 *Second Abs* is likely to cause confusion, mistake and/or deception to the consuming public as to the source of origin of Defendants' goods. Purchasers are delivered Defendants' *Triple Strength Abs* after purchasing Savvier's 6 *Second Abs* thereby believing they are purchasing Savvier's authorized products.

39. As a result of the foregoing, Savvier has been damaged both generally and specially, in an amount which is not currently precisely ascertainable, but which will be provided at such time when it is precisely ascertained.

40. The good will of Savvier's business under the 6 *Second Abs* mark is of enormous value, and Savvier will suffer irreparable harm should infringement be allowed to continue to the detriment of its good will.

41. Savvier has no adequate remedy at law available and is suffering and will continue to suffer irreparable harm and damages as a result of the aforesaid acts of Defendants, unless Defendants are enjoined and restrained from the distribution and sales of 6 *Second Abs*

counterfeit products and the further passing of *Triple Strength Abs* as *6 Second Abs*. Defendants' actions as alleged in this Complaint have caused and will cause irreparable harm to Savvier for which Savvier has no adequate remedy at law in that (i) if Defendants' infringing conduct continues, consumers are likely to become further confused as to the source and/or sponsorship of the *6 Second Abs* product line; (ii) the *6 Second Abs* product line is unique and valuable property which has no readily determinable market value; (iii) the infringement of Defendants constitutes interference with Savvier's good will and customer relationships; and (iv) Defendants infringing conduct, and the damages resulting to Savvier, is continuing. Accordingly, Savvier is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. §1116(a), 1117 and 1125. Furthermore, Savvier is entitled to an accounting for profits, treble damages, attorney's fees and costs under 15 U.S.C.A. §1117.

COUNT III

(Trade Dress Infringement Under §43(a) of The Lanham Act, 15 U.S.C. §1125(a) Against All Defendants)

42. Savvier repeats and re-alleges each and every allegation contained in paragraphs 1 - 8, 10 - 29, and 31 - 41 and incorporates each herein by reference.

43. Savvier's *6 Second Abs* product kit sold through television consists of a *6 Second Abs* manually operated exercise device, the *6 Second Abs* product videos and the *6 Second Abs* product literature which are all packaged in an oversized rectangular cardboard box colored in orange and yellow and displaying the orange and yellow *6 Second Abs* logo.

44. Savvier has been actively and successfully marketing and selling the *6 Second Abs* television product kits within numerous geographical territories throughout the United States, including the State of New York. As of the date of this filing, *6 Second Abs* television sales have generated approximately \$36 million in revenues, and just within the United States,

Savvier has sold approximately 400,000 of these television product kits. In or about February/March 2004, *6 Second Abs* was ranked as the #1 Infomercial in the country by both Infomercial Monitoring Services (“IMS”) and the Jordan Whitney Ranking Services, and continues to remain in IMS and Jordan Whitney’s top twenty rankings.

45. By virtue of television product sales over \$36 million dollars, *6 Second Abs* trade dress has acquired secondary meaning and functions as an indicator of source.

46. In or about early December 2004, an investigative agent for Savvier, Abacus Security, ordered a *6 Second Abs* product kit from Wonderfulbuys.com’s website and another *6 Second Abs* product kit from YouCanSave.com’s website.

47. Despite placing an order for *6 Second Abs* product kits, Savvier’s agent received two *Triple Strength Abs* product kits from Defendants in an attempt to pass off *Triple Strength Abs* as *6 Second Abs*. Furthermore, although the *6 Second Abs* orders were placed on Defendants’ separate websites, both product kits contained return address labels indicating Defendant Wonderfulbuys.com as the source of the goods.

48. Defendants’ *Triple Strength Abs* directly infringes upon Savvier’s *6 Second Abs* trade dress. Specifically, when comparing the total image and overall appearance of *Triple Strength Abs* to *6 Second Abs*, the following similarities are found: *Triple Strength Abs* is shipped in an identical sized rectangular cardboard box as *6 Second Abs* using the same yellow and orange color combinations, and displaying *Triple Strength Abs* where Savvier’s *6 Second Abs* logo is normally placed. Defendants’ *Triple Strength Abs* exercise device bears the identical shape, size, approximate weight, texture and color graphics (minus the *6 Second Abs* logo) as Savvier’s *6 Second Abs* exercise device. *Triple Strength Abs* is also packaged identically to the *6*

Second Abs product kit, i.e., one manually operated exercise device, two product videos and the product literature. Savvier's *6 Second Abs* trade dress is not functional.

49. Savvier has no control over the quality of the goods or services sold by Defendants' *Triple Strength Abs*, and because of the confusion as to the source engendered by Defendants, Savvier's valuable good will in respect to *6 Second Abs* will be irreparably harmed.

50. *Triple Strength Abs* trade dress has caused confusion and mistake and deception of purchasers as to the source of origin of Defendants' goods which falsely suggest that *Triple Strength Abs* is sponsored by, licensed by or otherwise affiliated with Savvier. These actions constitute trade dress infringement and are in violation of, *inter alia*, 15 U.S.C. §1125(a).

51. As a result of the foregoing, Savvier has been damaged both generally and specially, in an amount which is not currently precisely ascertainable, but which will be provided at such time when it is precisely ascertainable.

52. The good will of Savvier's business under the *6 Second Abs* mark is of enormous value, and Savvier will suffer irreparable harm should infringement be allowed to continue to the detriment of its good will.

53. Savvier has no adequate remedy at law available and is suffering and will continue to suffer irreparable harm and damages as a result of the aforesaid acts of Defendants, unless Defendants are enjoined and restrained from the distribution and sales of their *Triple Strength Abs* products. Defendants' actions as alleged in this Complaint have caused and will cause irreparable harm to Savvier for which Savvier has no adequate remedy at law in that (i) if Defendants' infringing conduct continues, consumers are likely to become further confused as to the source and/or sponsorship of Defendants' *Triple Strength Abs*; (ii) Savvier's *6 Second Abs* product line is unique and valuable property which has no readily determinable market value;

(iii) the infringement of Defendants constitutes interference with Savvier's good will and customer relationships; (iv) *Triple Strength Abs* is inferior to *6 Second Abs* and contains no product instructions; and (v) Defendants infringing conduct, and the damages resulting to Savvier, is continuing. Accordingly, Savvier is entitled to preliminary and permanent injunctive relief pursuant to 15 U.S.C. §1116(a), 1117 and 1125. Furthermore, Savvier is entitled to an accounting for profits, treble damages, attorney's fees and costs under 15 U.S.C.A. §1117.

COUNT IV

(New York Common Law Unfair Competition Against All Defendants)

54. Savvier repeats and re-alleges each and every allegation contained in paragraphs 1 - 8, 10 - 29, 31 - 41, 43 - 53 and incorporates each herein by reference.

55. The acts and conduct of Defendants alleged above in this complaint constitute unfair competition pursuant to the common law of the State of New York.

56. Savvier has the prior use of the Savvier trademark *6 Second Abs* as set forth above.

57. Savvier's trademark *6 Second Abs* set forth above has acquired secondary meaning.

58. The Defendants are using a confusingly similar trademark to identify goods in competition with Savvier's goods in the same trade area in which Savvier has already established its trademark *6 Second Abs*.

59. Defendants' conduct as alleged above has damaged and will continue to damage Savvier's goodwill and reputation and has resulted in losses to Savvier and an illicit gain of profit to Defendants in an amount which is unknown at the present time.

COUNT V
(For Imposition Of A Constructive Trust Upon The Illegal Profits of Defendants)

60. Savvier repeats and re-alleges each and every allegation contained in paragraphs 1 - 8, 10 - 29, 31 - 41, 43 - 53, and 55 - 59 and incorporates each herein by reference.

61. By reason of the acts and conduct set forth herein, Defendants have engaged and are engaged in deceptive, fraudulent and wrongful conduct in the nature of passing off their counterfeit *6 Second Abs* products as genuine *6 Second Abs* products sponsored or approved by Savvier. Savvier believes that Defendants maintain the illegal profits from their actions, all of which belong to Savvier.

62. By reason of their wrongful acts, Defendants hold illegal profits as constructive trustees for the benefit of Savvier.

63. Savvier is not presently aware of where the Defendants may have deposited all of their illegal profits from Defendants' wrongful acts against Savvier and the public. Savvier believes that Defendants' illegal profits, whether in the form of bank accounts or in the form of real or personal property, will eventually be traced. Savvier therefore believes that Defendants hold such illegal profits as constructive trustees for the benefit of Savvier.

COUNT VI
(Accounting Against All Defendants)

64. Savvier repeats and re-alleges each and every allegation contained in paragraphs 1 - 8, 10 - 29, 31 - 41, 43 - 53, 55 - 59 and 61 - 63 and incorporates each herein by reference.

65. Savvier is entitled pursuant to 17 U.S.C. §504 to recover any profits of Defendants that are attributable to their acts of infringement.

66. Savvier is entitled pursuant to 17 U.S.C. §504 to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

67. The amount of money due from Defendants to Savvier is unknown to Savvier and cannot be ascertained without an accounting of the number of units of counterfeit and infringing *6 Second Abs* products offered for distribution and distributed by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Savvier respectfully requests the following relief:

1. That the Court after hearing, enter a temporary order restraining Defendants Wonderfulbuys.com, YouCanSave.com, Inc. dba YouCanSave.com, Good World Corporation, Leena, Inc. and Vedant Rajput, and any of their partners, subsidiaries, officers, agents, servants, employees, and/or attorneys, as well as all persons and entities acting in concert or participating with them, from:

- (a) Importing into or exporting to the United States, its territories or possessions, any goods which contain the *6 Second Abs* videos/DVDs (“*6 Second Abs Rock Hard Abs*,” “*6 Second Abs Fat Burning Cardio*,” and/or “*6 Second Abs Total Body*,” as evidenced by United States Copyright Office Registration Nos. PA 1-199-493, PA 1-199-494 and PA 1-199-485); the *6 Second Abs* product literature (“*6 Second Abs Program Product Literature*,” as evidenced by United States Copyright Office Registration No. TX 5-829-896); and/or protected works from the *6 Second Abs* website (“6secondabs.com,” as evidenced by United States Copyright Office Registration No. TX 5-905-620), or any substantially similar variations thereon, which goods are not authorized by Plaintiff for sale by Defendants in the United States or elsewhere (hereinafter called “*6 Second Abs Goods*”);
- (b) Infringing Plaintiff’s established proprietary rights in the *6 Second Abs Goods* by further promoting advertising, publishing or offering for sale, goods which are counterfeit and/or substantially similar to the *6 Second Abs Goods*;
- (c) Buying, selling or in any other way dealing with *6 Second Abs Goods* other than through those channels of distribution authorized by the Plaintiff.
- (d) Claiming or representing to anyone that they have an ownership interest in or license to exploit the *6 Second Abs Goods* by passing off *Triple*

Strength Abs to purchasers of *6 Second Abs* Goods;

- (e) Distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs* as *6 Second Abs* Goods;
- (f) Distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs* infringing upon Plaintiff's *6 Second Abs* trade dress;
- (g) Disposing of any *6 Second Abs* Goods or *Triple Strength Abs* products, including any *6 Second Abs* Goods or *Triple Strength Abs* product literature, packaging and/or business records related thereto pending the conclusion of this case.

2. That the Court issue a Short Order of Notice on Plaintiff Savvier's Request for a Preliminary Injunction;

3. That upon return and after hearing that the Court issue an order preliminarily enjoining Defendants Wonderfulbuys.com, YouCanSave.com, Inc. dba YouCanSave.com, Good World Corporation, Leena, Inc. and Vedant Rajput, and any of their partners, subsidiaries, officers, agents, servants, employees, and/or attorneys, as well as all persons and entities acting in concert or participating with them, from:

- (a) Importing into or exporting to the United States, its territories or possessions, any goods which contain the *6 Second Abs* videos/DVDs ("6 Second Abs Rock Hard Abs," "6 Second Abs Fat Burning Cardio," and/or "6 Second Abs Total Body," as evidenced by United States Copyright Office Registration Nos. PA 1-199-493, PA 1-199-494 and PA 1-199-485); the *6 Second Abs* product literature ("6 Second Abs Program Product Literature," as evidenced by United States Copyright Office Registration No. TX 5-829-896); and/or protected works from the *6 Second Abs* website ("6secondabs.com," as evidenced by United States Copyright Office Registration No. TX 5-905-620), or any substantially similar variations thereon, which goods are not authorized by Plaintiff for sale by Defendants in the United States or elsewhere (hereinafter called "*6 Second Abs* Goods");
- (b) Infringing Plaintiff's established proprietary rights in the *6 Second Abs* Goods by further promoting advertising, publishing or offering for sale, goods which are counterfeit and/or substantially similar to the *6 Second Abs* Goods;

- (c) Buying, selling or in any other way dealing with *6 Second Abs* Goods other than through those channels of distribution authorized by the Plaintiff.
- (d) Claiming or representing to anyone that they have an ownership interest in or license to exploit the *6 Second Abs* Goods by passing off *Triple Strength Abs* to purchasers of *6 Second Abs* Goods;
- (e) Distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs* as *6 Second Abs* Goods;
- (f) Distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs* infringing upon Plaintiff's *6 Second Abs* trade dress;
- (g) Disposing of any *6 Second Abs* Goods or *Triple Strength Abs* products, including any *6 Second Abs* Goods or *Triple Strength Abs* product literature, packaging and/or business records related thereto pending the conclusion of this case.

4. That after a hearing on the merits the Court issue an order permanently enjoining Defendants, their partners, subsidiaries, officers, agents, servants, employees, and/or attorneys, as well as all persons and entities acting in concert or participating with them, from:

- (a) Importing into or exporting to the United States, its territories or possessions, any goods which contain the *6 Second Abs* videos/DVDs ("6 Second Abs Rock Hard Abs," "6 Second Abs Fat Burning Cardio," and/or "6 Second Abs Total Body," as evidenced by United States Copyright Office Registration Nos. PA 1-199-493, PA 1-199-494 and PA 1-199-485); the *6 Second Abs* product literature ("6 Second Abs Program Product Literature," as evidenced by United States Copyright Office Registration No. TX 5-829-896); and/or protected works from the *6 Second Abs* website ("6secondabs.com," as evidenced by United States Copyright Office Registration No. TX 5-905-620), or any substantially similar variations thereon, which goods are not authorized by Plaintiff for sale by Defendants in the United States or elsewhere (hereinafter called "*6 Second Abs* Goods");
- (b) Infringing Plaintiff's established proprietary rights in the *6 Second Abs* Goods by further promoting advertising, publishing or offering for sale, goods which are counterfeit and/or substantially similar to the *6 Second Abs* Goods;
- (c) Buying, selling or in any other way dealing with *6 Second Abs* Goods other than through those channels of distribution authorized by the

Plaintiff.

- (d) Claiming or representing to anyone that they have an ownership interest in or license to exploit the *6 Second Abs* Goods by passing off *Triple Strength Abs* to purchasers of *6 Second Abs* Goods;
- (e) Distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs* as *6 Second Abs* Goods;
- (f) Distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs* infringing upon Plaintiff's *6 Second Abs* trade dress;
- (g) Disposing of any *6 Second Abs* Goods or *Triple Strength Abs* products, including any *6 Second Abs* Goods or *Triple Strength Abs* product literature, packaging and/or business records related thereto pending the conclusion of this case.

5. Under Count I:

A. The issuance of a preliminary and permanent injunction barring Defendants, and their agents, employees and representatives from: (i) claiming or representing to anyone that they have an ownership interest in or license to exploit the *6 Second Abs* products; (ii) further distributing, selling or causing or authorizing sales and distribution of *6 Second Abs* products; and (iii) obtaining or retaining physical possession of any counterfeit *6 Second Abs* goods.

B. An award of statutory copyright damages, or if Savvier so elects, Savvier's actual damages and Defendants' profits according to proof at trial; and

C. For costs of suit herein incurred;

D. For reasonable attorney's fees according to proof at trial;

E. For such other and further relief as the Court may deem just and proper.

Under Count II:

A. The issuance of a preliminary and permanent injunction barring Defendants, and their agents, employees and representatives from: (i) claiming or representing to anyone that they have an ownership interest in or license to exploit the *6 Second Abs* products; (ii) further distributing, selling, causing or authorizing sales and distribution of *6 Second Abs* products; (iii) obtaining or retaining physical possession of any counterfeit *6 Second Abs* goods; (iv) claiming or representing to anyone that they have an ownership interest in or license to exploit the *6 Second Abs* products by passing off *Triple Strength Abs*; (v) further distributing, selling or causing or authorizing sales and distribution of *Triple Strength Abs* products as *6 Second Abs* products.

B. That Savvier be awarded damages for the injury to Savvier's business reputation and good will in an amount up to three times the actual damage and/or profits of the named Defendants together with attorney's fees, disbursement and costs of this action pursuant to 15 U.S.C. §1117.

C. That Defendants account for all profits and revenues generated by their unlawful exploitation of Plaintiff's rights in the *6 Second Abs* products, including all profits and revenues generated by their unlawful passing off of *Triple Strength Abs* as *6 Second Abs*;

D. For such other and further relief as the Court may deem just and proper.

Under Count III:

A. The issuance of a preliminary and permanent injunction barring Defendants, and their agents, employees and representatives from: (i) further distributing, selling, causing or authorizing sales and distribution of *Triple Strength Abs*; and (ii) obtaining or retaining physical possession of any infringing *Triple Strength Abs* goods.

B. That Savvier be awarded damages for the injury to Savvier's business reputation and good will in an amount up to three times the actual damage and/or profits of the named Defendants together with attorney's fees, disbursement and costs of this action pursuant to 15 U.S.C. §1117.

C. That Defendants account for all profits and revenues generated by the distribution, selling, causing or authorizing sales and distribution of their infringing *Triple Strength Abs* products;

D. For such other and further relief as the Court may deem just and proper.

Under Count IV:

A. Savvier's damages and Defendants' profits pursuant to New York law.

Under Count V:

A. That the Court enter an Order declaring that Defendants hold in trust illegal profits obtained from their distribution of counterfeit and infringing copies of Savvier's 6 *Second Abs* products.

Under Count VI:

A. That the Court enter an Order that Defendants hold their illegal profits as constructive trustees for the benefit of Savvier and requiring Defendants to provide Savvier a full and complete accounting of all amounts due and owing to Savvier as a result of Defendant's illegal activities.

6. Such other and further relief as the Court deems proper.

Dated: December 20, 2004

Respectfully submitted,

SAVVIER, LP

By its attorneys

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DEMAND FOR JURY TRIAL

Savvier hereby demands a trial by jury.

Dated: December 20, 2004

Respectfully submitted,

SAVVIER, LP

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